

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 1457/Del/2024, A.Y.2015-16

Jaikaran Nagar R-2, IInd floor, Raj Kunj, Raj Nagar, Ghaziabad, Uttar Pradesh PAN : AMPPJ9782P	Vs.	ITO Ward 2(1)(2) Ghaziabad, Uttar Pradesh,
(Appellant)		(Respondent)

Appellant by	Sh. Akhilesh Kumar, Adv & Ms. Vandana Kothari, Adv
Respondent by	Shri Om Prakash, Sr.DR

Date of Hearing	16/10/2024
Date of Pronouncement	18/10/2024

ORDER

PER YOGESH KUMAR U.S., JM :

This appeal is filed by the Assessee against the order of Ld. CIT(A)/National Faceless Appeal Centre ["NFAC" for short], dated 09/02/2024 for the Assessment Year 2015-16.

2. The grounds of Appeal are as under: -

"1. Because the A.O. has erred on law and facts in initiating the reassessment proceedings u/s 148/148A of the Act and further erred on law and facts in making the addition of Rs. 79,81,000/- applying the provisions of Sec-115BBE of the Act, in terms of the assessment order, whereas the entire assessment proceedings has been made in gross violation of the assessment procedure prescribed under the Act, as in force as amended from

time to time, without proper opportunity of being heard and without appreciating the facts of the case, and reply filed on record, against the principles on natural justice, and therefore the entire assessment proceedings and assessment order passed u/s 147/144 read with Section 1448 of the Act is liable to be quashed.

2. Because the A.O. has erred on law and facts as the assessment proceedings u/s 148/148A of the Act, has been initiated without issuing and service of a valid Notice u/s 148A(b). Order passed u/s 148A(d) and Notice u/s 148, on a non-existent address at Ghaziabad whereas undisputedly the assessee is having its address at Delhi as per records and PAN data, and therefore the entire assessment proceedings u/s 148/148A and assessment order passed u/s 147 of the Act are illegal and liable to be quashed.

3. Because the A.O. has erred on law and facts as the assessment proceedings u/s 147/148/148A of the Act, has been initiated without jurisdiction in as much as the Assessee belongs to the territorial jurisdiction of DELHI and there is no territorial jurisdiction over the Assessee of AO at GHAZIABAD and therefore the entire assessment proceedings u/s 148/148A and assessment order passed u/s 147/144 of the Act are without jurisdiction, illegal and liable to be quashed.

4. Because the A.O. has erred on law and facts as the assessment proceeding u/s 147/148/148A of the Act has been conducted in gross violation of the provisions of section 151A r/w 144B of the Act r/w e-Assessment of Income Escaping Assessment Scheme, 2022 vide notification no. 18/2022 issued on 29.03.2022 which mandates the income escaping assessment to be conducted in faceless mode and therefore entire assessment proceeding are illegal and liable to be quashed.

5. Because the A.O. has erred on law and facts as the assessment proceedings u/s 148/148A r/w sec 151 of the Act, has been initiated without jurisdiction in as much as there was no information with the A.O. which suggests that the income chargeable to tax has escaped assessment in terms of Explanation 1 to section 148 r/w Sec 149 of the Act.

6. Because the A.O. has erred on law and facts and passing assessment order u/s 147/144 of the Act, and making the addition of Rs. 79,81,000/- applying the provisions of Sec-115BBE of the Act, on account of cash deposited in Bank account, without considering the facts of the case that the Assessee is a farmer having no taxable income as per law and thus the addition made is grossly illegal and arbitrary and therefore liable to be deleted.

7. Because the AO has erred on law and facts in passing the assessment order without examining and considering the explanation and evidence filed on record, without proper opportunity of hearing and particularly without giving oral hearing to the Assessee, and therefore the assessment order is liable to be quashed on account of gross violation of the principles of natural justice.

8. The appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are independent and without prejudice to each other.”

2. Brief facts of the case are that, the Assessee has not filed return for Assessment Year 2015-16, an assessment proceedings have been initiated by reopening the case of the Assessee u/s 147 of the Act and a notice u/s 148 of the Act Income Tax Act 1961, ('Act' for short) has been issued. An assessment order came to be passed on 27/03/2023 u/s 147 read with Section 144 of the Act wherein the Ld. A.O. computed the taxable income at Rs. 70,77,736/-. Aggrieved by the assessment order dated 27/03/2023 the Assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 09/02/2024, dismissed the Appeal filed by the Assessee on the ground that the Appeal is not admissible as per the proviso of Section 249 (4)(b) of the Act as the Assessee has not paid the amount equal to the

amounts of advance tax.As against the order of the CIT(A) dated 09/02/2024,the Assessee preferred the present Appeal on the grounds mentioned above.

3. The Ld. Counsel for the Assessee submitted that, the Assessee is an agriculturist and the income of the Assessee is not taxable, therefore, the Assessee has not filed ITR for the year under consideration and the Assessee is not liable to pay any advance tax in terms of proviso to Section 249 (4) of the Act, therefore submitted the Ld. CIT(A) committed error in dismissing the Appeal is not without admitting the Appeal before the CIT(A).

4. Per contra, the Ld. Departmental Representative submitted that as per proviso to Section 249 (4) of the Act, no appeal shall be admitted unless the Assessee pay the tax due, therefore, the Ld. CIT(A) has rightly dismissed the Appeal.

5. We have heard both the parties and perused the material available on record. It is seen from the order of the Ld. CIT(A), the Ld. CIT(A) has issued deficiency letter informing the Assessee that the tax on returned income has not paid or not produced the particulars of payment so made. The Assessee vide response dated 13/01/2024 specifically stated that the Assessee is an agriculturist and the income of the Assessee is not taxable, therefore, contended that the Assessee is not required to pay the amount advance tax

u/s 249(4)(b) of the Act. The similar issue came for consideration by the Co-ordinate Bench of the Tribunal at Pune in the case of Hotel Sai Siddi (P) Ltd. v. DCIT, Cent. Cir. 1, Nasik [2011] 13 taxmann.com 155 (Pune), wherein in para 2 the Tribunal has held as under:

“2. So, let us deal with the appeals covering the issues of provisions of section 249(4)(a) an 249(4)(b) of the Act. For the sake of brevity, both these sections are reproduced as under:

“249(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal:

(b) Where a return has been filed by the Assessee, the Assessee has paid the tax due on the income returned by him; or

(b) Where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax when was payable by him;”

The provision of section 249 deals with form of appeal and limitation. Sub-section (4) of sector 249 deals with admission of appeal. According to the provision of section 249(4)(a), no appea shall be admitted unless at the time of filing of the appeal, the assessee has paid the tax due or the income returned by him. As per provision of section 249(4)(b) the appeal will not be admitted unless at the time of filing the appeal, the assessee has paid an amount equal to the amount of advance tax which was payable by him at the time of filing an appeal. There is also proviso to section 249(4), according to which, on an application made by the assessee in this behalf, the CIT(A) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of clause (b) of section 249(4) of the Act. On plain reading. The proviso to section 249(4) is applicable to a situation where no return has been filed by the assessee and the assessee is supposed to pay an amount equal to the amount of advance tax which was payable by him. It is obvious that Legislature intended that where the assessee has taken advantage of appeal under Chapter XX he should have paid at least admitted tax payable before the appeal is admitted. The opening words are clear enough to cover all kinds of appeal contemplated under Chapter XX and restricted meaning cannot be given or for that matter section cannot be read down. In case there is a dispute with regards to payment of admitted tax then the matter may be remitted to CIT(A) to decide on merit for verification of payments of tax on admitted income as held by the Madras High Court in the case of CIT v. Smt. Deivamalar [2009] 329 ITR 249.”

6. Considering the facts of the present case and the above ratio laid down by the Tribunal, we are of the opinion that the learned CIT(A) has wrongly applied the provisions of Section 249(4)(b) of the Act on the facts of this case. We, therefore, set aside the impugned order of learned CIT(A) and restore the matter to the file of learned CIT(A) to admit and decide the appeal of the Assessee on the merit of impugned addition/s, in accordance with law, after affording reasonable opportunity of being heard to the Assessee.

7. In the result, Appeal of the Assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 18th October, 2024

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 18/10/2024

R.N, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR

ITAT, NEW DELHI

